



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 567

IN THE MATTER OF BRIAN MAIN

DISPOSITION AGREEMENT

The State Ethics Commission ("Commission") and Brian Main ("Main") enter into this Disposition Agreement ("Agreement") pursuant to Section 5 of the Commission's **Enforcement Procedures**. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On October 15, 1996, the Commission initiated, pursuant to G.L. c. 268B, §4(j), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Main. The Commission has concluded its inquiry and, on October 16, 1997, found reasonable cause to believe that Main violated G.L. c. 268A, §19.

The Commission and Main now agree to the following findings of fact and conclusions of law:

1. Main was, during the time relevant, the Town of Hopedale part-time building commissioner. As such, he was a municipal employee as that term is defined in G.L. c. 268A, §1. As building commissioner Main was responsible for reviewing all building permit applications and issuing building permits and occupancy permits. Main was also responsible for reviewing plans to ensure they complied with the zoning bylaw.
2. At all times relevant, Main was the owner of Bri-Con Associates, an architectural firm doing business in the Hopedale area.
3. Joseph Gorby, at all times relevant, was a developer in the Hopedale area.
4. At some point in 1993 or 1994, Gorby hired Bri-Con to draft preliminary plans for a 16 unit subdivision to be located on Boyd Street in Hopedale ("Subdivision"). Main prepared these plans.^{1/}
5. In May 1994, the selectmen accepted G.L.c. 143, §3Z, which allows part-time building inspectors to perform private construction work in a town provided the work is inspected by another qualified inspector. On May 5, 1994, Main filed a letter of disclosure with the town clerk disclosing he would be providing architectural and consulting services to Gorby, and that if the project proceeded, inspections would be conducted by the building commissioner from the Town of Mendon.
6. On September 9, 1994, Gorby applied to the Hopedale ZBA for a comprehensive permit to construct the Subdivision under a so-called Local Initiative Program ("LIP").^{2/} This submission consisted of an application and supporting house and site plans. Main's name appeared on the application as the architect/engineer of record and as the contractor/builder. In addition, the house plans attached to the application were those drafted by Main, however, the plans were certified by Main's partner at Bri-Con, architect Brian Judge. (The site plans were drawn by an engineering firm, not by Main or Bri-Con.)

This was the first time in Hopedale a developer had sought such a comprehensive permit under the LIP. Consequently, there was no clear procedure in place for processing Gorby's application. Nevertheless, the

consensus was that each town board having an interest in the matter would be provided with an opportunity to comment on the application. The Building Department was one of those agencies.

7. On September 12, 1994, Main, as the building commissioner, reviewed the drawings and site plans that accompanied the Gorby application and certified that the development was in a certain zoning district and that the site plans and application were accurate.

8. On October 20, 1994, Main, as the building commissioner, wrote to the ZBA chair stating that the house plans appeared to be in conformance with the state code^{3/} and that there were no conditions that would adversely affect the Building Department's ability to issue permits. (In so stating, Main was reviewing his own plans.) In addition, Main stated that the Building Department would assure conformance with all applicable codes.^{4/} (If the special permit had issued, supervision of the construction would have been handled by an inspector from another town.)

9. When Main reviewed the original applications and plans on September 12, 1994, and when he wrote his letter to the ZBA chair on October 20, 1994, regarding the plans' and the project's compliance with the state code, Main knew that he had the following financial expectations regarding this project: First, he knew that it was reasonably foreseeable that Gorby would hire him to be the architect who would draft the detailed home construction plans.^{5/} (It is traditional, according to Main, that the architect who does the preliminary drawings is hired to do the detailed drawings.) Second, Main also knew that if the permit were approved and the construction went forward, Main planned to bid to become the construction manager for the project.^{6/} Third, Main knew that if there were problems with the preliminary drawings, any need for revisions would be directed back to Bri-Con Associates.

10. Except as otherwise permitted by that section,^{7/} General Law c. 268A, §19 prohibits a municipal employee from participating as such in a particular matter in which to his knowledge he has a financial interest.

11. The determination by the Town of Hopedale as to whether to approve the comprehensive permit was a particular matter.^{8/} In addition, the individual decisions by Main as to whether the plans were accurate and complied with State Building Code and his decision to offer assurances that his department (though, not Main personally) would ensure that the actual construction complied with the code were also particular matters.

12. Main participated^{9/} in those particular matters by deciding that the plans were accurate and complied with the code, and by communicating that his department would ensure that these units would comply with the code.

13. At the time he so acted, he expected to do the detailed plans for the project, expected to seek other work on the Subdivision which was dependent on the permit being approved, and knew that if the plans were determined to be inadequate, that would affect him financially. Consequently, he knew that he had a financial interest in these particular matters.

14. Therefore, by approving the plans on September 12, 1994, by recommending in an October 20, 1994 letter to the ZBA chair that the plan be approved, and by stating that his department would ensure that the actual construction would comply with the state code, Main participated as a municipal employee in particular matters in which to his knowledge he had a financial interest, thereby violating §19.

In view of the foregoing violations of G.L.c. 268A by Main, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Main:

(1) that Main pay to the Commission the sum of one thousand dollars (\$1,000) as a civil penalty for violating G.L. c. 268A, §19;

(2) that Main waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: November 10, 1997

¹Main received approximately \$2,000 for the work he did on the preliminary plans.

²Under the LIP a developer is allowed to construct a multi-unit housing development under less stringent zoning guidelines than would otherwise apply, provided that a certain percentage of the homes constructed are priced to sell to low-income homebuyers.

³The Commission is not aware of any evidence indicating the plans did not conform with the code.

⁴This assurance was important. The application had generated significant controversy including a concern that the construction would be substandard. Consequently, Main's assurance that the construction would comply with all codes helped allay those concerns.

⁵Main expected to receive approximately \$5,000 for the detailed plan work.

⁶Main also hoped to act as the developer's liaison with the realtors in getting units ready by picking out colors for carpets, and matters of that sort. The cost for this service would be about \$1,000 per house.

⁷None of the exceptions apply.

⁸"Particular matter," any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

⁹"Participate," participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).